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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/508,927	06/10/2005	Peter Geiger	GEIGER 8 PCT	8170
25889 7590 02/27/2009 COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576				
EXAMINER SMITH, MATTHEW J				
ART UNIT 3635		PAPER NUMBER		
MAIL DATE 02/27/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/508,927

Applicant(s)

GEIGER, PETER

Examiner

Matthew J. Smith

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zagray (2655032) in view of Castonguay et al. (5139721).

Zagray discloses a block set with substantially prismatic concrete blocks having a symmetrical and central projection 12 on the upper surface and a depression 15 on the underside; the projections and depressions with approximately similar shape and dimensions and the stacked concrete blocks fixed together and adjusted in relation to each other by the interlocking of projections and depressions (Fig. 6); a projection of a cross-sectionally pyramidal stump-shaped molded appendage that extends longitudinally along the concrete block; the block having oblique faces 11, the free ends of which lean towards each other; a depression made of a cross-sectionally pyramidal stump-shaped groove that extends longitudinally along the concrete block, the block having oblique faces which lean towards the inside of the block and towards each other; one of the depressions pointing towards the inside of the block connecting ends connects with the longitudinal curved recess provided on the block; and the blocks present a depression on the under side and a subsequent curved recess and a smooth upper surface.

This reference does not disclose the inner depths of the curved recesses with span proportions of 1:1.8, 1:2.1 and 1:3.4 independent of the height of the blocks in relation to the recesses or the concrete blocks are formed with length of, 40, 35, 30, 25, 20 and 14 cm, and heights of, 40, 30, 20 and 12.8 cm, a method for manufacturing concrete blocks for a block kit comprising the steps of: providing a substantially cup-shaped molding tool having a selected cross-section and depth; using the molding tool to form a concrete block packet comprising a plurality of substantially prismatic concrete blocks connected in a row, separating the blocks from each other by a percussive action so that visible faces of each block have an identical surface roughness, the molding tool designed to simultaneously and combinedly mold rows of blocks and packets of blocks from a predetermined number of concrete blocks, the design of the molding tool chosen to form the packet of blocks from a number of blocks set out adjacently in rows, the rows of blocks and packets of blocks present separation grooves along every individual block width at the side faces and the top surface and that the blocks separated from each other by means of a force being affected in the separation groove, several packets simultaneously and combinedly produced in one molding tool, or the rows of blocks and packets of blocks present separation grooves every individual block width along the side faces and the top surface and the blocks can be separated from each other by means of a force being affected in the separation groove.

Castonguay et al. show, in Fig. 2, a method for manufacturing concrete blocks for a block kit comprising: providing a substantially cup-shaped molding tool having a selected cross-section and depth; using the molding tool to form a concrete block

packet 10 having concrete blocks connected in a row; separating the blocks from each other by a percussive action (col. 3, line 64) so that visible faces of each block have an identical surface roughness (inherent); the molding tool simultaneously and combinedly molds rows of blocks and packets of blocks; the molding tool form the packet from a number of blocks set out adjacently in rows; the rows of blocks and packets of blocks present separation grooves along every individual block width at the side faces and the top surface and the blocks can be separated from each other by means of a force being affected in the separation groove; several packets simultaneously and combinedly produced in one molding tool; and the rows of blocks and packets present separation grooves along every individual block width at the side faces and the top surface and the blocks can be separated from each other by means of a force being affected in the separation groove.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to fabricate the Zagray blocks in a packet, as shown by Castonguay et al., in order to allow the packet to be separated into shorter length modules.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to fabricate the block in the dimensions claimed since no new, unobvious, or unpredictable utility would occur when using these dimensions.

Response to Arguments

Applicant's arguments, see page 11, filed 17 December 2009, with respect to the rejections of claims 1-7 and 9-12 under 35 U.S.C. 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new rejection is made in view of Castonguay et al. The examiner contends Castonguay et al. show the claimed packet.

The surface roughness is not given patentable weight. Since no block structure or manufacturing technique provides this roughness when breaking the blocks, the roughness is inherent. Also, the references do not state the cleaved surfaces are abraded or cut.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Smith whose telephone number is (571) 272-7034. The examiner can normally be reached on T-Th, 8-3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

/M. J. S./
Examiner, Art Unit 3635
24 February 2009